

1 WILLIAM L. ANTHONY, JR. (State Bar No. 166026)
2 wanthony@orrick.com
3 MATTHEW H. POPPE (State Bar No. 177854)
4 mpoppe@orrick.com
5 ZHENG LIU (State Bar No. 229311)
6 jenliu@orrick.com
7 ORRICK, HERRINGTON & SUTCLIFFE LLP
8 1000 Marsh Road
9 Menlo Park, California 94025
10 Telephone: +1-650-614-7400
11 Facsimile: +1-650-614-7401

12 Attorneys for Defendant
13 VARIAN MEDICAL SYSTEMS, INC.

14 UNITED STATES DISTRICT COURT
15 NORTHERN DISTRICT OF CALIFORNIA
16 SAN FRANCISCO DIVISION

17 UNIVERSITY OF PITTSBURGH OF THE
18 COMMONWEALTH SYSTEM OF HIGHER
19 EDUCATION d/b/a UNIVERSITY OF
20 PITTSBURGH, a Pennsylvania non-profit
21 corporation (educational),

22 Plaintiff,

23 v.

24 VARIAN MEDICAL SYSTEMS, INC., a
25 Delaware corporation,

26 Defendant.

Case No. CV 08-02973 MMC

27 **DECLARATION OF HASSAN**
28 **MOSTAFAVI IN SUPPORT OF**
VARIAN'S ADMINISTRATIVE
MOTION TO FILE UNDER SEAL
EXHIBITS TO SEALED POPPE
DECLARATION

1 I, Hassan Mostafavi, declare as follows:

2 1. I reside in the State of California and am an employee at Varian Medical Systems,
3 Inc. ("Varian"). Except as indicated herein, I have personal knowledge of the facts set forth in
4 this Declaration. If called as a witness, I could and would testify competently to the matters set
5 forth herein.

6 2. From 1982 through the end of 1995, I was a principal at TAU Corporation
7 ("TAU") where I ran the business unit for the company imaging systems areas. Because I was in
8 charge of a business unit, one of my responsibilities was to maintain the confidentiality of TAU's
9 proprietary information. During my tenure at TAU, I worked with Varian on various projects and
10 developed an understanding of Varian's procedures for maintaining the confidentiality of
11 information pertaining to its research and development activities and its licensing agreements
12 with outside parties. In January of 1996, I began two companies, one named Image Science
13 Corporation and another named Imetric. Part of my consulting work while at those two
14 companies was for Varian. From January of 1998 to the present, I have worked at Varian as a
15 senior scientist. In that capacity, and in the course of my prior dealings with Varian, I gained
16 knowledge pertaining to Varian's procedures for maintaining the confidentiality of its research
17 and development activities and the licensing agreements that it executes.

18 3. I have reviewed the following three documents:

19 a. Exhibit 10 to the Sealed Declaration of Matthew H. Poppe in Support of
20 Varian's Motion to Transfer Action to U.S. District Court for Western District of Pennsylvania
21 ("Sealed Poppe Declaration"), which I understand consists of excerpts from the deposition of Majid
22 Riaziat ("Riaziat transcript"). Pages 18-21 of the Riaziat transcript disclose information related to
23 internal research projects at Varian that Varian was not in the habit of disclosing to the public.
24 Pages 182-184 of the transcript describe the contents of a User's Manual for the Arrow Patient
25 Positioning System. That system was never commercialized, and thus to my knowledge the
26 information in the manual was never made public. Pages 185-196 of the transcript describe a
27 Commercialization and Software License Agreement between TAU and Varian and associated
28 documents described below, as well as Varian's development efforts and strategies related to the

1 same. Pages 197-198 of the transcript describe additional historical information related to the
2 Arrow project and Varian's storage of source code related to that project.

3 b. Exhibit 20 to the Sealed Poppe Declaration, is a memorandum from Dr.
4 Riazat to "Tim" regarding the licensing negotiations between Varian and TAU over the Arrow
5 system ("Licensing Negotiations Memorandum"). From the context of the memorandum, I
6 believe "Tim" is Tim Guertin, Varian's current CEO. The memorandum includes proposals for
7 royalty payments and projected sales prices related to the Arrow project.

8 c. Exhibit 21 to the Sealed Poppe Declaration is entitled "Commercialization
9 and Software License Agreement between Varian and TAU" ("License Agreement"). It contains
10 a confidentiality provision in Section 19. In addition to setting forth licensing terms, the License
11 Agreement discusses Varian's internal research related to the Arrow project.

12 4. The portions of the Riazat deposition transcript identified above, the Licensing
13 Negotiations Memorandum, and the License Agreement contain information pertaining to
14 research and development efforts made by Varian. As a general practice, Varian keeps such
15 documents confidential because they contain technical, business, and marketing information
16 and/or technical details about potential products that Varian may choose to develop and/or
17 market.

18 5. By keeping such technical, business, and marketing information confidential,
19 Varian is able to time product announcements and marketing decisions in a strategic manner, *e.g.*,
20 by being the first to develop and market certain ideas, and in order to maintain a competitive
21 edge. Even if certain research is unsuccessful, or Varian chooses not to create products based on
22 certain research, Varian's general practice is to keep such information confidential. Otherwise,
23 Varian's competitors might be able to use such information to get a head start in their own
24 research or to perform research more cost-effectively by avoiding the duplication of unsuccessful
25 research. In addition, Varian maintains the confidentiality of technical details related to building
26 various products, such as the type of software it uses for building its products, in order to prevent
27 competitors from copying or simulating Varian products. With these principles in mind, Varian
28 would have kept documentation and technical details related to the Arrow system confidential. I

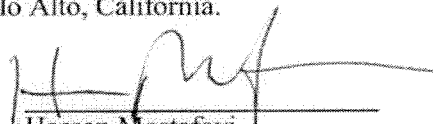
1 have no reason to believe that Varian, at any time, made public information related to the Arrow
2 system of the type contained in the Riazat transcript and the other documents discussed above.

3 6. Varian has taken and continues to take various steps to protect the confidentiality
4 of its research and development efforts. For example, Varian conducts or maintains the results of
5 its research and development in secure areas that are locked, protected by security guards, and/or
6 watched by receptionists. The User's Manual for the Arrow system (described herein) and
7 other confidential information would have, as a practice, been disclosed to non-Varian people
8 only if the outsiders executed a confidentiality agreement. For example, Varian shared the User's
9 Manual for the Arrow system with the University of California at Davis, during a collaborative
10 project. A confidentiality agreement was almost certainly in place as Varian's practice when
11 engaging in collaborative research with universities was and is to have non-disclosure
12 agreements in place.

13 7. The Riazat transcript, the Licensing Negotiations Memorandum, and the License
14 Agreement also contain information about actual or proposed terms of licensing negotiations
15 between Varian and TAU. Varian maintains the confidentiality of information pertaining to its
16 licensing negotiations and agreements. In general, Varian maintains the confidentiality of the
17 terms of any licensing agreements so that it can try to maintain an advantage in subsequent
18 licensing negotiations. The License Agreement also discloses information regarding Varian's
19 research and development efforts related to the Arrow project, and so Varian's practice is to keep
20 this type of document confidential for the additional reasons discussed above in paragraph 5.

21 I declare under penalty of perjury under the laws of the United States that the foregoing is
22 true and correct.

23 Executed this 22nd day of July, 2008 at Palo Alto, California.

24 
25 Hassan Mostafavi
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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of DECLARATION OF HASSAN MOSTAFAVIN IN SUPPORT OF VARIAN'S ADMINISTRATIVE MOTION TO FILE UNDER SEAL EXHIBITS TO SEALED POPPE DECLARATION was served upon the University of Pittsburgh, through its counsel, via:

_____	Hand-Delivery
_____	Facsimile
_____	First Class, US Mail, Postage Prepaid
_____	Certified Mail-Return Receipt Requested
<u> X </u>	ECF Electronic Service
_____	Overnight Delivery

at the following addresses:

Rita E. Tautkus
Morgan Lewis & Bockius, LLP
One Market – Spear Street Tower
San Francisco, CA 94105
rtautkus@morganlewis.com

Dated: July 22, 2008

/s/ Matthew H. Poppe
Matthew H. Poppe